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✓ Rajkumar, aged about 35 years, son of
Shri Bhukhi Ram Sahu, resident of
village Hardi, Tehsil Janjgir, Distt.
Janjgir-Champa, Chhattisgarh.

1. State of Chhattisgarh through
Principal Secretary Panchayat
and Gramin Vikas, D.K. Complex,
Raipur, Chhattisgarh.
2. Additional Collector, Janjgir-
Champa, Chhattisgarh.
3. Sub Divisional Officer (Revenue)
Janjgir, Distt. Janjgir-Champa,
Chhattisgarh.
4. Public Health Engineer, Akaltara,
Distt. Janjgir-Champa,
Chhattisgarh.
5. Gram Panchayat, Hardi,
Tehsil Janjgir, Distt. Janjgir-
Champa, Chhattisgarh Through
Smt. Gita Bai Miri, Sarpanch,
Gram Panchayat, Hardi.

P.R. No. 18870
Presented by Kunkun by Sam
dated 16.8.29

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100-443887-100

HIGH COURT OF CHHATTISGARH AT BILASPUR**SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.****WRIT PETITION NO.1850 OF 2001****Petitioner : Rajkumar****versus****Respondents : State of Chhattisgarh and others**

Present : Mr. Parag Kotecha with Mr. Sanjay Agrawal, counsel for the petitioner.
Mr. A.S. Kachhawaha, Government Advocate for the State/respondents No.1 to 3.
Mr. Indrasen Sahu, counsel for respondents No.4 and 5.

ORDER**(Passed on 15th of November, 2006)**

The petitioner was appointed as Panchayat Karmi in the year 1995. The petitioner was issued a show cause notice by Gram Panchayat, Hardi by order dated 30-12-2000 (Annexure P-4). Pursuant to the show cause notice, the petitioner filed his reply dated 6-1-2001 (Annexure P-5), which was received in the office of Secretary, Gram Panchayat, Hardi, Block Akaltara, District Janjgir-Champa on 7-1-2001. The Gram Panchayat, Hardi, without following the provisions of Rule 7 of the M.P. Panchayat Service (Discipline and Appeal) Rules, 1999 (henceforth 'the Rules of 1999'), proceeded to consider the case of the petitioner and by resolution dated 22-1-2001, which was subsequently approved by the Gram Sabha in its meeting dated 23-1-2001,



terminated the services of the petitioner from the post of Panchayat Karmi vide order dated 31-1-2001 (Annexure P-1).

2. Being aggrieved, the petitioner filed an appeal under Rule 3 of the M.P. Panchayats (Appeal and Revision) Rules, 1995 (henceforth 'the Rules of 1995') before the Sub-Divisional Officer, Janjgir-Champa being Appeal Case No.44A89/2000-2001. The Sub-Divisional Officer, after hearing the parties, by order dated 30-4-2001 (Annexure P-2), recorded a finding that the petitioner had not filed any reply to the show cause notice issued by the Gram Panchayat. The finding is perverse on the face of it as reply dated 6-1-2001 (Annexure P-5) clearly indicates that the reply was received in the office of the Secretary, Gram Panchayat, Hardi, Block Akaltara, District Janjgir-Champa on 7-1-2001.

3. Being further aggrieved, the petitioner preferred a second appeal under Rule 3 of the Rules of 1995 before the Additional Collector, Janjgir-Champa being Appeal Case No.20A-89/2000-2001. The Additional Collector, Janjgir-Champa, vide order dated 3-7-2001 (Annexure P-3), confirmed the finding recorded by the Sub-Divisional Officer, Janjgir-Champa and committed the same perversity as recorded by the Sub-Divisional Officer.

4. Being further aggrieved, the petitioner has filed this writ petition impugning the order of termination dated 31-1-2001 (Annexure P-1) passed by the Gram Panchayat, Hardi, order dated 30-4-2001 (Annexure P-2) passed by the Sub-Divisional Officer, Janjgir-Champa and order dated 3-7-2001 (Annexure P-3) passed by the Additional

Collector, Janjgir-Champa upholding the order of removal dated 31-1-2001 (Annexure P-1) as being just and legal.

5. Having heard learned counsel for the parties and on perusal of the petition and the documents appended thereto, it is evident that the Courts/Tribunals below have failed to apply their mind to the legal provisions as enshrined in Rule 7 of the Rules of 1999. It is clearly provided that in case of termination of a Panchayat employee, Rule 7 of the Rules of 1999 has to be followed in its letter and spirit. The findings of the Sub-Divisional Officer and the Additional Collector are perverse as the records clearly indicate that reply of the show cause notice was sent by the petitioner, which was duly received in the office of the Secretary, Gram Panchayat, Hardi, Block Akaltara, District Janjgir-Champa on 7-1-2001. The Gram Panchayat, without following the procedure for imposition of major penalty of termination, proceeded to terminate services of the petitioner by way of resolution passed by the Gram Panchayat, which is not permissible in law.

6. The Supreme Court in the case of *Radhey Shyam Gupta Vs. U. P. State Agro Industries Corporation Ltd. and another*¹ has observed in para 34, as under :-

"34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not

merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive."

7. This Court in *Dhaluram Kosaria Vs. State of C.G. & others*², *Beegan Ram Vs. State of C.G. & others*³, and *Prakash Chand Soni Vs. State of C.G. & others*⁴ held that the non compliance of the statutory provisions and denial of principles of natural justice tantamount to infraction of not only the provisions of Rule 7 of the Rules of 1999, but, the provisions of Article 311(2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules of 1999.

8. It is thus clear that the Gram Panchayat has not followed the statutory provisions of law before imposing the major penalty of removal of the petitioner from the post of Panchayat Karmi.

9. For the reasons and the discussions made hereinabove and the dicta laid down by the Court in various cases (Supra), the order of removal dated 31-1-2001 (Annexure P-1) is bad and is quashed.

10. On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view the fact that the termination order has been vitiated not on merit

but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 30% back wages would be sufficient in the interest of justice. The liberty is reserved to the Gram Panchayat to initiate *de novo* enquiry on the alleged irregularities, if so advised.

11. Accordingly, the writ petition is allowed to the extent indicated above with costs quantified to be a sum of Rs.1,000/- (Rupees One Thousand).

Sd/-
Satish K. Agnihotri
Judge

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- 1 (1999) 2 SCC 21
 - 2 2006 (2) CGLJ 186
 - 3 2006 L.T. (C.G.) 41
 - 4 2005 L.T. (C.G.) 151